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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

COUNTY OF TULARE,

Plaintiff and Respondent,

v.

DANIEL LARA,

Defendant and Appellant.

F076815

(Kern Super. Ct.
No. S1501FD16073)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kern County. Ralph L. McKnight, Jr., Commissioner.

Daniel Lara, in pro. per., for Defendant and Appellant.

Xavier Becerra, Attorney General, and Marina L. Soto, Deputy Attorney General, for Plaintiff and Respondent.

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Appellant, Daniel Lara, appeals the modification of a child support award increasing his monthly payment from \$508 to \$991. Lara did not appear at the child support modification hearing nor did he provide evidence that he submitted written

* Before Poochigian, Acting P.J., Smith, J. and Meehan, J.

objections to the modification. On appeal, Lara asserts that he cannot afford the increased payments without working overtime. We find no abuse of discretion and affirm.

FACTUAL AND PROCEDURAL BACKGROUND¹

Lara appeared at child support modification hearing on June 23, 2016. At the hearing, the judge deviated from the guideline and set Lara's support for his three minor children at \$508 per month.²

On October 6, 2017, the County of Tulare Department of Child Support Services (DCSS) served Lara by mail notice of a child support modification hearing to be held on November 15, 2017. Based on the guideline calculation results provided with the notice, DCSS recommended an increased monthly support amount of \$991. Lara did not attend the November 15, 2017, hearing. At the hearing, the court recalculated the guideline child support amount to be \$1,083, but elected to deviate from the guideline, and ordered Lara to pay \$991 per month for the support of his minor children. In its order after the hearing, the court noted that although the guideline child support was \$1,083 per month, the court found that a guideline support amount would result in Lara being left with insufficient funds available for the basic necessities of life. Therefore, the court found it was in the best interests of the children to deviate from the guideline amount and order Lara to pay \$991 per month.

¹ The record provided on appeal appears incomplete. An appellant has the burden of providing an adequate record. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295.) The failure to provide an adequate record on an issue requires that the issue be resolved against appellant. (*Id.* at pp. 1295-1296; *Hernandez v. California Hospital Medical Center* (2000) 78 Cal.App.4th 498, 502.) Here, appellant provided a copy of the minute order dismissing the action, the notice of appeal, and a copy of the electronic docket. Our review of the matter is based on the record as presented.

² Despite references to exhibits taken into evidence, Lara only provided a copy of the minute order of the June 23, 2016 hearing.

On December 13, 2017, Lara filed his notice to appeal the child support modification order.

DISCUSSION

“A child support order may be modified when there has been a material change of circumstances. [Citation.] The party seeking the modification bears the burden of showing that circumstances have changed such that modification is warranted. [Citation.]” (*In re Marriage of Cryer* (2011) 198 Cal.App.4th 1039, 1054.) The reason for this rule “ ‘ “is to preclude relitigation of the same facts” and to bring finality to determinations concerning financial support.’ [Citation.]” “ ‘ “ ‘ “Absent a change of circumstances, a motion for modification is nothing more than an impermissible collateral attack on a prior final order.” ’ ” ’ [Citation.]” (*In re Marriage of Usher* (2016) 6 Cal.App.5th 347, 357.)

“ ‘The ultimate determination of whether the individual facts of the case warrant modification of support is within the discretion of the trial court. [Citation.] The reviewing court will resolve any conflicts in the evidence in favor of the trial court’s determination.’ [Citation.]” (*In re Marriage of Cryer, supra*, 198 Cal.App.4th at p. 1054.) “ ‘ “ ‘Discretion is abused whenever, in its exercise, the court exceeds the bounds of reason, all of the circumstances before it being considered. The burden is on the party complaining to establish an abuse of discretion, and unless a clear case of abuse is shown and unless there has been a miscarriage of justice a reviewing court will not substitute its opinion and thereby divest the trial court of its discretionary power.’ ” [Citation.]’ [Citation.]” (*Acosta v. Brown* (2013) 213 Cal.App.4th 234, 244.)

Lara has failed to show the trial court abused its discretion in modifying his child support. First, Lara contends that the court improperly denied his request to telephonically appear at the hearing. This argument fails as Lara provided an inadequate appellate record. The only evidence of the request to appear telephonically are docket entries indicating that Lara filed a request on November 3, 2017, and the court denied the

request on November 8, 2017. Accordingly, without evidence regarding why the request was denied, we are unable to review whether the court's determination was improper.

However, Lara's main contention on appeal is he was previously paying less in child support and is not able to afford to pay the modified amount. To the extent that Lara challenges the modification of child support payments, the record Lara provided is likewise inadequate to allow us to rule in his favor. It lacks his income and expense declaration, and any related documentation he filed with the court at the modification hearing.³ It also lacks the transcript of the modification hearing. In the absence of the transcript, we cannot determine what evidence supported the court's order or the reasons the court exercised its discretion as it did. In such a case, "[t]he evidence is presumed sufficient to support the judgment." (*Pringle v. La Chapelle* (1999) 73 Cal.App.4th 1000, 1003; see also *Nielsen v. Gibson* (2009) 178 Cal.App.4th 318, 324 [where appellant provides no reporter's transcript of proceeding from which he appeals, we conclusively presume the evidence supports the court's findings].) On this record, we must reject Lara's challenge to the modification of his child support payment.

DISPOSITION

The judgment is affirmed. Each party shall bear their own costs on appeal. (Cal. Rules of Court, rule 8.278, subd. (a)(5).)

³ Assuming appellant filed any declarations or exhibits with the court.